IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's Order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

W.P. No. 1330 (S/S) of 2006

Date of decision :-18-10-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :-18-10-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No. 1330 (S/S) of 2006

Vijay Kumar Gupta
S/o Late Sri Vishwanath Gupta
R/o House No. D-23 Sriramnagar Colony Jwalapur

Versus

1. State of Uttaranchal
   through Additional Director General of Police
   (Administration), Uttaranchal Dehradun
2. Superintendent of Police, Pauri Garhwal...Respondents

Mrs. Jyotsna, learned counsel for the petitioner.
Sri N.P. Sah, learned standing counsel for the respondents/State.

Per Hon'ble J.C.S. Rawat, J.

1. By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following reliefs:-

> "i) To issue a writ, order or direction to hold the C.B.I. inquiry in the matter so that the veracity of the entire selection/recruitment process for the post of constables in Uttaranchal Police held at Pauri may come out.
>
> ii) To issue a writ, order or direction in the nature of mandamus directing the respondents to appoint the petitioner on the post of Constable.
>
> iii) To pass any and further order as this Hon'ble Court may deem fit and proper in the present circumstances of the case.
>
> iv) To award the cost of the writ petition to the petitioner."

2. It has been pleaded in the writ petition that an advertisement for the appointment of Constable in Uttaranchal Police was published. In pursuance of the said advertisement, the petitioner having all the qualifications for the appointment has submitted his application on 04.02.2006 alongwith all the annexure which are required by the

authorities. The petitioner was physically examined on 22.02.2006 by Mr. Sanjay Rathour and Circle Officer, Pauri. It was further pleaded that the petitioner had obtained full marks, i.e., 100 marks in the aforesaid physical examination. It was also stated that Mr. Sanjay Rathour had accepted this fact that the petitioner had obtained full marks in the physical examination. The petitioner was ultimately declared unsuccessful as the petitioner had obtained 64 marks in physical examination instead of 100 marks. The petitioner had challenged that Mr. Sanjay Rathour whom he was physically examined has accepted this fact in the affidavit that the petitioner had obtained 100 marks in the physical examination. When the petitioner's selection was not made, the petitioner had challenged the selection process as well as his rejection by way of awarding less mark in the physical examination.

3. Heard Mrs. Jyotsna-Advocate for the petitioner; Sri N.P. Sah, learned standing counsel for the State/respondents and perused the record.

4. It was contended by the learned counsel for the petitioner that the petitioner was physically examined on 22.02.2006 by Mr. Sanjay Rathour and Circle Officer, Pauri. Sanjay Rathour had accepted the fact that the petitioner had obtained full marks in physical examination. However, the marksheet reveals that the petitioner had not obtained 100 marks, as such, the petitioner could not compete in the examination and the petitioner was declared unsuccessfully. Learned counsel for the respondents refuted the contention. At the outset, it has not been pleaded that Sri Sanjay Rathour was a member of the Committee by whom the physical test

had been conducted. It is well settled position of law that the result of tests on merits cannot be unsuccessfully challenged by the candidate who takes a chance to get selected at the competitive examination and who ultimately found himself to be unsuccessful. It is also to be kept in mind that in this petition, this court is not sitting as a court of appeal and try to reassess the relative merits of the candidate concerned who had not appeared before the competitive examination nor can the petitioner successfully urge before the court that he was given less marks though his performance was better. It is for the competitive examination committee, which amongst others, consists of experts of the department who assess the performance. The performance and the measurement made by the Committee cannot be brought in challenged only on the ground that the assessment was not proper or justified as that would be the function of an appellate court and this court is not sitting as an appellate court over the assessment made by such an expert committee. **[See (1995) 3 SCC p/486, Madan Lal and others Vs. State of J&K and others and AIR 2002 SC p/2322, Chandra Prakash Tiwari and others Vs. Shakuntala Shukla and others makes others].**

5. It is further made clear that the Circle Officer who had given the marks cannot be lightly overruled by saying by a Constable that the petitioner had obtained 100 marks in the physical examination. There is no allegation against the Circle Officer, Pauri that he has any grudge against the petitioner.

6. In view of the foregoing discussion, this writ petition devoids of merit is liable to be dismissed and is dismissed accordingly. The parties shall bear their own costs.

7. All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S. Rawat, J.)

18th October, 2006
Shiv